



LARRY D. RIPLEY
Senior Attorney

May 2, 2002

Ms. Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P. O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-01-34
Idaho Power Company's Petition For
Reconsideration

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Petition For Reconsideration regarding the above-described case.

I would appreciate it if you would return a stamped copy of this transmittal letter for our files.

Very truly yours,

/s/

Larry D. Ripley

LDR:jb
Enclosures

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Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR AN)	CASE NO. IPC-E-01-34
ORDER APPROVING THE COSTS TO BE)	
INCLUDED IN THE 2002/2003 PCA YEAR)	IDAHO POWER COMPANY'S
FOR THE IRRIGATION LOAD REDUCTION)	PETITION FOR
PROGRAM AND ASTARIS LOAD)	RECONSIDERATION
REDUCTION AGREEMENT)	
_____)	

Idaho Power Company (hereinafter referred to as "Idaho Power" or "the Company"), Petitioner herein, pursuant to RP 331 and § 61-626, Idaho Code, respectfully petitions the Commission for reconsideration of those parts of Order No. 28992, with a service date of April 15, 2002¹, set forth below, upon the grounds that said Order is unreasonable, unlawful, erroneous, unduly discriminatory, and not in conformity with the facts of record and/or the applicable law in that the denial of the recovery of reduced/lost

¹ Order No. 28992 issued on April 15, 2002 did not contain the provision that the Order was a final Order. On April 18, 2002 an Errata to Order No. 28992 was issued which Errata contained the final Order provisions. Idaho Power has filed its Petition For Reconsideration within 21 days of April 15, 2002 to avoid any question that the Petition was timely filed.

revenues in the Irrigation Load Reduction Program results in confiscation, and ultimately rates which are confiscatory, for the following reasons and upon the following grounds:

1. The denial of the recovery of reduced/lost revenues in the Irrigation Load Reduction Program is unreasonable, unlawful, erroneous, unduly discriminatory, and not in conformity with the facts of record and/or the applicable law and results in confiscation, and ultimately rates which are confiscatory.

2. Commission Order No. 28992 is not in conformity with the facts of record set forth in IPC-E-01-03 or the Orders issued in IPC-E-01-03, specifically Order No. 28699, which authorized the recovery of reduced/lost revenues in the Irrigation Load Reduction Program.

3. Order No. 28992 issued in this proceeding is a collateral attack on Order No. 28699 which authorized the recovery of reduced or lost revenues.

4. Commission Order No. 28992, which requires the implementation of programs, including Demand-Side Management programs, without recovery of all costs, including revenues which are lost or reduced as a result of the implementation of a particular program, is unreasonable, unlawful and confiscatory.

I.

THE DENIAL OF THE RECOVERY OF REDUCED/LOST REVENUES IN THE IRRIGATION LOAD REDUCTION PROGRAM IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINATORY, AND NOT IN CONFORMITY WITH THE FACTS OF RECORD AND/OR THE APPLICABLE LAW AND RESULTS IN CONFISCATION, AND ULTIMATELY RATES WHICH ARE CONFISCATORY

In Case No. IPC-E-01-03 Idaho Power presented evidence as to why recovery of reduced/lost revenues in the Irrigation Load Reduction Program were critical to the Company in order to conduct an Irrigation Load Reduction Program. The orders issued in that proceeding, especially Order No. 28699, authorized the recovery of

reduced/lost revenues in the Irrigation Load Reduction Program and left the quantification of that amount to a subsequent filing. As noted by the Commission, Idaho Power and Staff quantified the amount of reduced/lost revenue that had accrued through September 2001 as \$9,783,625. The Commission, in Order No. 28992, without evidentiary or legal support, denied recovery of this amount. Idaho Power submits that the evidentiary record and orders issued in IPC-E-01-03 and the comments filed on modified procedure in IPC-E-01-34 clearly demonstrate that Idaho Power is entitled to recover \$9,783,625 as reduced/lost revenues as a result of the Irrigation Load Reduction Program through September 2001. The Company should also be entitled to submit the remaining reduced/lost revenues in the Irrigation Load Reduction Program calculated by the same method used by the Company and Staff to quantify the reduced/lost revenues through September 2001.

II.

COMMISSION ORDER NO. 28992 IS NOT IN CONFORMITY WITH THE FACTS OF RECORD SET FORTH IN IPC-E-01-03 OR THE ORDERS ISSUED IN IPC-E-01-03, SPECIFICALLY ORDER NO. 28699, WHICH AUTHORIZED THE RECOVERY OF REDUCED/LOST REVENUES IN THE IRRIGATION LOAD REDUCTION PROGRAM

As noted by the Commission in its Order issued in this proceeding, i.e. Order No. 28992, the Commission in Order No. 28699 issued in IPC-E-01-03 specifically found and ordered that “direct costs and lost revenue impacts of this Program may be treated as a purchased power expense in the Company’s Power Cost Adjustment (“PCA”) mechanism.” Order No. 28699 was relied on by Idaho Power in the implementation of the Irrigation Load Reduction Program. As stated by the Company in testimony in IPC-E-01-03, without the assurance of the recovery of reduced/lost revenues in the Irrigation Load Reduction Program, the Company would not have pursued this program. The Commission cannot lawfully issue an Order permitting certain activities and the recovery of reduced/lost

revenues as a result of those activities and then at a later date rescind its authorization to the detriment of the entity relying on that Order, which in this case is Idaho Power.

III.

ORDER NO. 28992 ISSUED IN THIS PROCEEDING IS A COLLATERAL ATTACK ON ORDER NO. 28699 WHICH AUTHORIZED THE RECOVERY OF REDUCED OR LOST REVENUES

Order No. 28699 issued in IPC-E-01-03 stated that the “direct costs and lost revenue impacts of this Program may be treated as a purchased power expense in the Company’s Power Cost Adjustment (“PCA”) mechanism.” The Commission’s determination in Order No. 28992 that the word “may” is not an authorization or guarantee that Idaho Power was entitled to recovery of reduced/lost revenues in the Irrigation Load Reduction Program is a collateral attack on Order No. 28699. The plain meaning of “may” in the context of Order No. 28699 is that the Company was permitted to recover reduced, or lost, revenues. Order No. 28992 is in direct contradiction to Order No. 28699 and, accordingly, a collateral attack on Order No. 28699 in violation of Idaho Code, § 61-625.

IV.

COMMISSION ORDER NO. 28992, WHICH REQUIRES THE IMPLEMENTATION OF PROGRAMS, INCLUDING DEMAND-SIDE MANAGEMENT PROGRAMS, WITHOUT RECOVERY OF ALL COSTS, INCLUDING REVENUES WHICH ARE LOST OR REDUCED AS A RESULT OF THE IMPLEMENTATION OF A PARTICULAR PROGRAM, IS UNREASONABLE, UNLAWFUL AND CONFISCATORY

In determining whether programs such as the Irrigation Load Reduction Program or any other demand-side management program is cost effective, the Company is entitled to include the effects of that program on the Company's revenue stream and earnings. If, without the recovery of reduced/lost revenues, the program is not cost effective, Idaho Power cannot be required to implement such a program. A Commission Order which requires the implementation of a demand-side management program without making Idaho Power whole as to all of the costs of the program (including recovery of reduced/lost revenues as in the Irrigation Load Reduction Program) is confiscatory. Idaho Power as a private utility cannot be required to undertake programs if Idaho Power will be required to absorb some of the costs of the programs. For the Commission to contend that the utility must implement demand-side management programs without being allowed to recover reduced/lost revenues such as in the Irrigation Load Reduction Program, and to determine that if the utility requires such compensation, the utility is imprudent in the legal meaning of the word, is unreasonable, unlawful, erroneous and not in conformance with the law.

CONCLUSION

The Company believes that the evidentiary record in the companion proceeding, i.e. IPC-E-01-03, and the record in this proceeding, i.e., IPC-E-01-34, is sufficient for the Commission to make a determination as to Idaho Power's petition for

reconsideration. If, however, the Commission believes that additional evidence is required, Idaho Power stands ready to proceed immediately to hearing on this matter.

The Company respectfully requests that the Commission reconsider Order No. 28992 and upon reconsideration authorize the Company to include reduced/lost revenues for the Irrigation Load Reduction Program in the amount of \$9,783,625 as a cost the Company is authorized to recover in the Irrigation Load Reduction Program and to also permit the Company to submit for recovery the remaining reduced/lost revenues for the Irrigation Load Reduction Program that were incurred as the result of the Irrigation Load Reduction Program. The Company also requests that the Commission modify Order No. 28992 to provide that in determining the cost effectiveness of any demand-side management program, the Company is entitled to recover all costs that it would incur as a result of the implementation of a particular program.

DATED at Boise, Idaho, this 2nd day of May, 2002.

LARRY D. RIPLEY
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of Mar, 2002, I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S PETITION FOR RECONSIDERATION to the following named parties by the method indicated below, and addressed to the following:

John Hammond	<u> x </u>	Hand Delivered
Deputy Attorney General	<u> </u>	U.S. Mail
Idaho Public Utilities Commission	<u> </u>	Overnight Mail
472 W. Washington Street	<u> </u>	FAX
P.O. Box 83720		
Boise, Idaho 83720-0074		
 Randall C. Budge	<u> </u>	Hand Delivered
Racine, Olson, Nye, Budge & Bailey	<u> x </u>	U.S. Mail
P.O. Box 1391	<u> </u>	Overnight Mail
201 E. Center	<u> </u>	FAX
Pocatello, Idaho 83204-1391		
 Anthony Yankel	<u> </u>	Hand Delivered
29814 Lake Road	<u> x </u>	U.S. Mail
Bay Village, Ohio 44140	<u> </u>	Overnight Mail
	<u> </u>	FAX
 Conley E. Ward	<u> </u>	Hand Delivered
Givens, Pursley LLP	<u> x </u>	U.S. Mail
277 North 6th Street, Suite 200	<u> </u>	Overnight Mail
P. O. Box 2720	<u> </u>	FAX
Boise, Idaho 83701-2720		
 Alan W. Seder	<u> </u>	Hand Delivered
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St. Louis, Missouri 63141	<u> </u>	FAX

LARRY D. RIPLEY